

Commission's list of seven specific categories of network elements – the local loop, the network interface device (“NID”), local switching, interoffice transport, signaling and call-related databases, OSS, and operator services and directory assistance – that must be unbundled,¹³ SWBT nevertheless continued to abide by its existing contracts that require SWBT to provide each of the items under the terms of section 251(c)(3). See Auinbauh Aff. ¶ 84. Likewise, the Texas 271 Agreement obligates SWBT to provide each of the Commission's original Rule 319 elements to business customers for two years and to residential customers for three years, even though the Commission has indicated in its UNE Remand proceeding that some of those elements need not be provided. Id. ¶ 85.

Subject to any appeals, SWBT will comply with all new requirements established in this Commission's UNE Remand proceeding by their effective dates.¹⁴ See New York Order ¶ 31 &

¹³ First Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499, 15683-775, ¶¶ 366-541 (“Local Competition Order”), modified on recon., 11 FCC Rcd 13042 (1996), vacated in part, Iowa Utils. Bd. v. FCC, 120 F.3d 753 (8th Cir. 1997), aff'd in part, rev'd in part sub nom. AT&T Corp. v. Iowa Utils. Bd., 119 S. Ct. 721 (1999); see also 47 C.F.R. § 51.319 (1998) (“Rule 319”).

¹⁴ See Third Report and Order and Fourth Further Notice of Proposed Rulemaking, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 99-238 (rel. Nov. 5, 1999) (“UNE Remand Order”). SWBT also will comply with the requirements of the recent Line Sharing Order when they become effective. See Third Report and Order in CC Docket No. 98-147, Fourth Report and Order in CC Docket No. 96-98, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, FCC 96-98, ¶ 161 (rel. Dec. 9, 1999); Auinbauh Aff. ¶ 86; Chapman Aff. ¶ 54.

This Commission currently is considering a petition brought by MCI WorldCom regarding whether ILECs should afford CLECs using UNEs access to associated third-party intellectual property. See Public Notice, Pleading Cycle Established for Comments on Petition of MCI for Declaratory Ruling that New Entrants Need Not Obtain Separate License or Right-to-Use Agreements Before Purchasing Unbundled Elements, CCBPol 97-4, DA 97-557 (rel. Mar. 14, 1997). SWBT will be bound by the industry rules arising out of that proceeding. See Texas 271 Agreement § 7.3.5.

n.420. SWBT currently offers an amendment to the Texas 271 Agreement that establishes SWBT's compliance with new requirements established in that proceeding. See Auinbauh Aff. ¶ 86; New York Order ¶ 31 & n.420. SWBT will make use of its proven systems, policies, and procedures in complying with those requirements that become effective within 30 days of publication of the UNE Remand Order. Auinbauh Aff. ¶ 86.

Part V of this Brief discusses SWBT's offerings of access to unbundled loops, the NID, switching, transport, signaling and call-related databases, and operator services and directory assistance in detail, under the appropriate checklist items. Below, however, we describe SWBT's offerings that allow CLECs several ways of obtaining SWBT's UNEs in combination.

First, SWBT will combine UNEs for CLECs at rates set by the Texas PUC pursuant to 47 U.S.C. § 252(d). See Auinbauh Aff. ¶¶ 136-142. SWBT has made combinations – including new UNE combinations that are not covered by FCC rules – available to all CLECs in Texas on a legally binding basis through the Texas 271 Agreement and arbitrated interconnection agreements. Id. ¶ 88-89; see Texas 271 Agreement Attach. 6, § 2.4; SWBT/AT&T Agreement Attach. 6, § 2.4. See also SBC/Ameritech Merger Order ¶ 393 (provision of UNE Platform for service to residential customers).

The Texas PUC set nonrecurring, recurring, and electronic ordering charges for pre-assembled UNE combinations in its Mega-Arbitration proceeding. See Auinbauh Aff. ¶¶ 137, 140. The Texas PUC originally established those charges according to the legal rules set forth by the Eighth Circuit, which did not require incumbent LECs to combine UNEs for CLECs. See id. ¶ 141; Iowa Utils. Bd., 120 F.3d at 813. Pursuant to the Supreme Court's reinstatement of this Commission's rule that incumbent LECs must make pre-existing combinations of UNEs available under sections 251(c)(3) and 252(d)(1), however, SWBT does not charge the Texas

PUC-approved Central Office Access Charge (“COAC”) for such existing combinations.

Auinbauh Aff. ¶ 141; (App. A, Part A-2, Tab 3); see Texas 271 Agreement Attach. UNE § 14.2; SWBT/AT&T Agreement Attach. 6, App. Pricing – UNE § 3.3. For combinations of UNEs that do not already exist in SWBT’s network and that require new work to assemble, SWBT charges the COAC in addition to the other applicable UNE charges set by the Texas PUC. Auinbauh Aff. ¶ 141.¹⁵

SWBT also has developed and spelled out in detail a number of offerings that enable CLECs to combine UNEs for themselves. Deere Aff. ¶ 164; Auinbauh Aff. ¶¶ 40, 95-97; Texas 271 Agreement Attach. 6. As discussed in Part V.A, below, SWBT makes various collocation arrangements, including shared collocation cages, common cage, cageless, and virtual collocation, available to CLECs for interconnection and access to UNEs. Where space for physical collocation is not available, SWBT also permits CLECs to collocate their equipment in adjacent controlled environmental vaults or huts, under the same nondiscriminatory terms as traditional physical collocation. In addition, SWBT will provide interested CLECs access to a secured frame room (or cabinet, where space constraints require) that is set aside for

¹⁵ In a pending appeal before the United States Court of Appeals for the Fifth Circuit, MCI, joined in part by AT&T, have challenged a few nonrecurring charges established by the Texas PUC, as well as the COAC. Southwestern Bell Tel. Co. v. AT&T Communications of the S.W., Inc., No. 98-51005 (5th Cir. filed Oct. 20, 1998). The challenged rates are cost-based in accordance with the Act and Commission rules. See Auinbauh Aff. ¶¶ 141-142; Smith Aff. ¶¶ 39-42. In any event, however, SWBT will comply with the court’s (and any subsequent Texas PUC) decision, thus satisfying the checklist requirements. Cf. Second Louisiana Order, 13 FCC Rcd at 20775-76, ¶¶ 302-304. In that regard, the Texas 271 Agreement (and other negotiated and arbitrated agreements) include a procedure for conforming the agreement to changes in law. Texas 271 Agreement § 18.3. This provision would apply, for example, were the United States Court of Appeals for the Eighth Circuit to reinstate this Commission’s previously vacated rules regarding new UNE combinations. See 47 C.F.R. § 51.315(c)-(f).

accomplishing the necessary connections. Auinbauh Aff. ¶¶ 40, 64, 95-97. CLECs are not required to own or operate any equipment of their own to combine SWBT's UNEs. Id. ¶ 97.

The materials and procedures used by SWBT to provide UNEs for combination by CLECs have been tested in actual practice by SWBT, as well as by collocated CLECs. See Deere Aff. ¶¶ 151, 163. SWBT has developed methods and procedures for new combinations of specific UNEs, including the loop/dedicated transport combination known as the enhanced extended loop ("EEL"). See Auinbauh Aff. ¶¶ 93-94; Texas 271 Agreement Attach. 6, § 14.7.1. See also Part V.E, below (discussing EELs).

CLECs are not restricted to these methods of combining UNEs, but may request other technically feasible methods of access that are consistent with the provisions of the 1996 Act and other governing statutes and decisions. See Deere Aff. ¶¶ 80-84; Auinbauh ¶ 66; Texas 271 Agreement Attach. 6, § 2.22.

D. SWBT Provides CLECs Nondiscriminatory Access to Unbundled Loops for Their Advanced Services

Although SWBT filed its draft section 271 application with the Texas PUC in March 1998, CLECs did not request Digital Subscriber Line ("xDSL")-capable loops in any significant quantity until September 1999. Chapman Aff. ¶ 4. Provisioning volumes have grown steadily since then, however, and CLECs currently are using nearly 1000 such loops in Texas. Id. Bell Atlantic reported about the same number of xDSL-specific loops in its New York application. New York Order ¶ 321 (approximately 1100 xDSL loops provisioned).

The record demonstrates in multiple ways that SWBT is meeting and will meet the CLECs' new demand for xDSL-capable loops. Specifically, this is demonstrated by: (1) Telcordia-supervised testing of SWBT's capabilities; (2) successful provisioning of those xDSL-capable loops that have been requested; (3) recent Texas PUC findings on this issue; (4) SWBT's

heightened performance guarantees for xDSL and nascent services; (5) SBC's establishment of a separate affiliate to provision SBC's own advanced services; and (6) SWBT's offering of special discounts on unbundled loops for CLECs' advanced services.

Testing. In New York, Bell Atlantic did not include xDSL-capable loops in its OSS tests, because these offerings were so new. New York Order ¶ 319. In Texas, however, SWBT and the PUC recognized the potential future significance of xDSL-capable loops and the Texas PUC invited all interested CLECs to send orders for such loops as part of the Telcordia-supervised OSS test. Ham Aff. ¶ 264. Only two CLECs indicated their ability to participate, and neither was able to send large volumes of orders to SWBT. Id. ¶¶ 280-281; see Telcordia Final Report at 9.

Telcordia itself reviewed SWBT's systems and procedures for processing xDSL-capable loop inquiries and orders, and they passed every test. Telcordia Final Report at 9, 76-78; Ham Aff. ¶ 279. Telcordia also verified that SWBT has processes and business rules in place for ADSL, that loop qualification and order processes are provided on time, and that CLECs had raised no outstanding issues relating to ADSL. Telcordia Final Report at 78.

Recent Provisioning. More recently, CLECs' orders for xDSL-capable loops have allowed SWBT to develop a track record of commercial performance. Between October and December 1999, SWBT provisioned 944 xDSL loops for CLECs in Texas. Chapman Aff. ¶ 4. In connection with these orders, CLECs received timely access to pre-ordering information about the make-up of SWBT's loops. Dysart Aff. ¶¶ 343-344. Current order volumes and the CLEC-desired disaggregation of SWBT's performance reporting limit the availability of provisioning and maintenance data. See id. ¶¶ 329-333. Nevertheless, the available data show generally comparable installation timeliness. Id. ¶¶ 383, 401 & Attach. B (Measurements 55.1-01,

55.1-02, 60-08, 62-09 & 63-09). CLECs also are receiving loops that are equal in quality to SWBT's retail loops. Id. ¶¶ 372, 487.

The Texas PUC's Supplemental Proceeding and SWBT's Enhanced Performance Guarantees. During November and December 1999, the Texas PUC and its staff focused their attention upon SWBT's performance in the provision of xDSL-capable loops and addressed new issues that had been raised by CLECs, as well as by DOJ and other commenters during FCC proceedings on Bell Atlantic's New York application. See Chapman Aff. ¶ 5; Shelley Aff. ¶¶ 49-51. SWBT spent six weeks working intensively with the Texas PUC Commissioners and staff, and with CLECs, to address each of the concerns. As the Affidavit of Carol Chapman describes in detail, SWBT committed to and then implemented a series of enhancements to its pre-ordering, ordering, and provisioning processes.

In addition, after discussions with this Commission and the Texas PUC, SWBT agreed to establish even greater protections for CLECs that provide advanced services, by increasing the payments SWBT makes for failing to meet key performance tests relating to nascent services. Dysart Aff. ¶¶ 48-50, 54-56. For instance, where there are 100 or fewer observations for a measure on a statewide basis, SWBT will triple its liquidated damage payments to CLECs, in addition to making any required payment to the Texas State Treasury. Id. ¶ 50.

At the end of its review, after considering SWBT's processes and performance, the Texas PUC concluded unanimously that CLECs have a meaningful opportunity to compete in the provision of all xDSL-based services in Texas, that SWBT provides CLECs and SBC's retail operations equivalent access to loop make-up information, and that SWBT provides nondiscriminatory access to xDSL-capable loops. Chapman Aff. ¶ 6; see Dec. 16, 1999 Open

Meeting Tr. at 12-15. The Texas PUC also made clear its intention to monitor SWBT's performance in these areas on an ongoing basis. Dec. 16, 1999 Open Meeting Tr. at 57-61.

SWBT's Texas PUC-approved processes allow CLECs to offer their customers any type of xDSL service, subject only to future national industry standards for spectrum management. Chapman Aff. ¶ 3.

For pre-ordering, SWBT provides CLECs access to the very same on-line database SBC's retail operations use to obtain loop "pre-qualification" information, in satisfaction of all nondiscrimination obligations. Id. ¶¶ 4-10; Ham Aff. ¶ 212; see also New York Order ¶ 143. SWBT also provides CLECs detailed information regarding the suitability of particular loops for xDSL services. This loop "qualification" process provides all of the information available in SWBT's internal records about the make-up of a particular loop, including the actual loop length and the presence of any xDSL-disturbing devices. Chapman Aff. ¶¶ 20, 28; Conway Aff. ¶ 101. Once again, CLECs have access to the same information as SBC's retail operations, in the same manner and within the same time frames. Chapman Aff. ¶¶ 26-31; Conway Aff. ¶ 101; Dysart Aff. ¶ 344. Notwithstanding that its current processes are nondiscriminatory, however, SWBT is implementing new, electronic loop qualification processes as promised in the SBC/Ameritech merger commitments. Chapman Aff. ¶ 32; Ham Aff. ¶¶ 207-213.

CLECs have the option of selecting the precise conditioning (i.e., loop preparation) they desire. Chapman Aff. ¶ 5. The loop provisioning interval for CLECs is the same as or shorter than the equivalent interval for SBC's retail advanced services operations. Id. ¶¶ 62-64. Arbitrators of the Texas PUC set low rates for loop conditioning, while directing SWBT to file an additional conditioning cost study by March 1, 2000. See Arbitration Award, Petition of Rhythms Links, Inc. for Arbitration To Establish an Interconnection Agreement with

Southwestern Bell Tel. Co., Docket No. 20226, at 94-101 (Tex. PUC Nov. 1999). All necessary conditioning for loops of 12,000 feet or less is performed without charge. Id. at 95-96.

To obtain loops for their advanced services, CLECs use ordering and provisioning systems and processes that have been proven through SWBT's provisioning of more than 166,000 unbundled local loops in Texas. See, e.g., Chapman Aff. ¶ 28; Deere Aff. ¶¶ 85-94. Conditioning unbundled loops for xDSL service similarly involves field work performed by trained SWBT technicians, using time-tested procedures. In any event, CLECs order the vast majority (about 86 percent) of their xDSL-capable loops without any conditioning. Chapman Aff. ¶ 58. This further addresses concerns about SWBT's ability to fill orders for xDSL-capable loops, because increasing volumes of CLEC orders are placing proportionately little additional demand on SWBT's conditioning crews.

SBC's Structurally Separate Affiliate. The above facts are alone sufficient to demonstrate SWBT's nondiscriminatory provisioning of xDSL-capable loops. Nevertheless, pursuant to paragraph 330 of the New York Order, SWBT also is able to show that it already has established a fully operational, structurally separate affiliate to provide advanced services in Texas and other states. This affiliate, SBC Advanced Solutions Inc. ("ASI"), is operating in compliance with the structural separation requirements and implementation deadlines set out in Appendix C of the SBC/Ameritech Merger Order. See generally Brown Aff. (App. A, Part A-3, Tab 2). These are the same operational requirements to which Bell Atlantic prospectively committed in connection with its section 271 application, although Southwestern Bell is months ahead of Bell Atlantic in implementing them. See New York Order ¶ 331 & n.1036.

ASI has an approved interconnection agreement in Texas and is certified to provide service in the State. Brown Aff. ¶ 34. Consistent with the implementation timetable of the

SBC/Ameritech Merger Order, ASI is providing SBC's ADSL, Frame Relay, and other advanced services in Arkansas, and will do so in Texas as of February 2, 2000. Id. ¶ 5 & Attach. A. As of February 28, 2000, ASI will provide advanced services in Texas using the same unbundled network elements and associated ordering systems and procedures as are used by CLECs. Id. This accelerates by more than a month the implementation schedule this Commission found appropriate in its SBC/Ameritech Merger Order, App. C ¶¶ 3-6.

The New York Order noted that "the creation of a separate affiliate for the provision of retail services may provide significant evidence that a BOC complies with the nondiscrimination requirements of the competitive checklist." New York Order ¶ 331. ASI provides, in this Commission's words, "a structural mechanism to ensure that competing providers of advanced services receive effective, nondiscriminatory access" to SWBT's facilities and services. SBC/Ameritech Merger Order ¶ 363.

Surrogate Line Sharing Discounts. Southwestern Bell has taken still another step, not required by the New York Order, to ensure CLECs nondiscriminatory access to unbundled loops for their advanced services. This Commission's Line Sharing Order will require incumbent LECs to share the lines they use to provide voice-grade services with data CLECs; SWBT is taking timely steps to be in compliance with this requirement, although no incumbent LEC has yet developed the means to implement it. See Auinbauh Aff. ¶ 86. Until SWBT provides this capability, however, SWBT offers unaffiliated providers of advanced services a 50-percent discount off the monthly recurring charge and the nonrecurring line charge for a full unbundled loop, where the CLEC provides data service to a customer of SWBT's voice-grade services in a manner that would be compatible with line sharing. See SBC/Ameritech Merger Order ¶¶ 369-370. SBC was the first company to propose and implement such discounts, and Bell Atlantic

recently agreed to emulate them in connection with its New York application. See New York Order ¶ 331 & n.1036.

The Commission has found that SWBT's "surrogate line sharing" discounts provide CLECs "the economic equivalent of line sharing" in advance of its actual availability, SBC/Ameritech Merger Order ¶ 369, and "ensure" nondiscriminatory access to SWBT's loops. Id. ¶¶ 369, 370. The surrogate line sharing discounts thus serve as further proof of Southwestern Bell's commitment to opening local markets in Texas, "spur[ring] deployment of advanced services" even more effectively than the baseline provisions of the 1996 Act. Id. ¶ 370.

E. There Is No Significant Risk of "Backsliding" Following Southwestern Bell's InterLATA Entry in Texas

A final concern articulated in prior section 271 decisions is that, following section 271 relief, a BOC might cease providing CLECs nondiscriminatory interconnection and network access, and thereby impede the continued development of local competition. See, e.g., Michigan Order, 12 FCC Rcd at 20748-49, ¶¶ 393-394; Second Louisiana Order, 13 FCC Rcd at 20806, ¶¶ 363-364. That concern has no place here.

As described above and in Part V, below, Southwestern Bell has made irreversible investments in opening the local market, assumed enforceable contractual commitments, and developed a track record of nondiscriminatory performance. SWBT's performance in serving CLECs is backed by potential liability for performance payments exceeding one-third of SWBT's net revenues for the State of Texas – up to \$289 million per year. The SBC/Ameritech merger conditions additionally obligate SBC to take market-opening steps that are unprecedented in the industry, such as discounts of 25 percent off of the statutory prices for unbundled

residential loops, resale discounts of 32 percent off of the retail rate, and further upgrades to SWBT's OSS specifically for the benefit of CLECs.¹⁶

The substantive requirements of the 1996 Act, as well as Commission and Texas PUC orders implementing those sections – not to mention the antitrust laws – will fully apply to Southwestern Bell's local operations after section 271 relief. Section 271(d)(6) also gives the Commission special tools to ensure Southwestern Bell's continued compliance with the prerequisites of interLATA relief. If Southwestern Bell failed to meet any of its statutory or Commission-imposed obligations, CLECs that closely monitor Southwestern Bell's performance would no doubt report those violations to this Commission, the Texas PUC, or the courts.

SBC also will be returning to this Commission to request interLATA relief under section 271 for eleven additional states. In those proceedings, opponents of Bell company long distance entry predictably will maintain that Southwestern Bell somehow became less hospitable to CLECs after it entered the long distance business in Texas, and urge the Commission to withhold relief in other states on that basis. Southwestern Bell thus has a strong and ongoing incentive to prove these arguments wrong, by providing its wholesale customers service that is even better than the nondiscriminatory service provided prior to approval of this Application.

The Commission relied on such considerations in finding that Bell Atlantic's local markets in New York would remain open following section 271 relief. See New York Order

¹⁶ See SBC/Ameritech Merger Order ¶¶ 377-397 (outlining additional performance measures, enhanced OSS, restructured OSS charges designed to assist new and smaller market entrants, special OSS assistance for qualifying LECs, most-favored nation arrangements, and carrier-to-carrier promotions); id. ¶ 419 (merger conditions “likely to . . . spur competition in the local . . . market[]”); id. ¶ 422 (merger conditions stimulate entry into local markets “by reducing the risk and costs associated with entry into SBC . . . territories”); id. ¶ 440 (anticipating that “the

¶¶ 429-453. Here, moreover, there is an additional consideration. As part of its approval of Southwestern Bell's proposed section 271 application, the Texas PUC specifically identified some of the tools it intends to use to enforce SWBT's obligations. These include review of SWBT's performance measures and performance results, including a "watch list" of potential emerging problems; an open docket to resolve disputes that arise between SWBT and CLECs; existing industry forums that are devoted to change management and trunking issues; an industry working group in Texas that is addressing xDSL issues; and a CLEC users' group that provides a broad-based platform for developing and pressing CLEC concerns. Dec. 16, 1999 Open Meeting Tr. at 60-65. Beyond this, the Chairman of the Texas Commission stressed that the Texas PUC would not hesitate to work with regulators in other states and with this Commission to take appropriate steps across jurisdictional lines if it became concerned about backsliding by SWBT. Id. at 66. Indeed, Chairman Wood termed this "the best antibacksliding remedy we've got." Id. Such pledges of active and forceful state commission oversight, backed by the Texas PUC's record of leadership in implementing the 1996 Act and reviewing Southwestern Bell's proposed section 271 application, warrant great respect from this Commission, just as they will receive great respect from Southwestern Bell.

III. SOUTHWESTERN BELL'S ENTRY INTO THE INTERLATA SERVICES MARKET IN TEXAS WILL PROMOTE COMPETITION AND FURTHER THE PUBLIC INTEREST

Still another element of the Commission's section 271 analysis is a determination whether interLATA entry "is consistent with the public interest, convenience, and necessity." 47

conditions will prove beneficial in jumpstarting residential competition by lowering entry barriers for residential competition").